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SUBJECT: HONG KONG OPENS PUBLIC CONSULTATION PHASE ON  
COMPETITION LAW

¶1. SUMMARY. At a public forum on November 21, Financial  
Secretary Henry Tang encouraged all interested parties to

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give their views on how best to safeguard competition in Hong  
Kong. Tang's announcement represents a continuation of the  
Hong Kong Government's (HKG's) step-by-step examination of  
Hong Kong's competition policy and follows a June 2006 report  
issued by Hong Kong's Competition Policy Review Committee  
(CPRC), set up in June of 2005, to review Hong Kong's current  
competition policy. The CPRC report recommended introducing  
a new cross-sector competition law and a regulatory body to  
enforce it. Hong Kong's Economic Development and Labor  
Bureau has published a 68-page public discussion document on  
the way forward for competition policy in Hong Kong,  
"Promoting Competition - Maintaining our Economic Drive."  
The document which includes "20 Key Questions" for interested  
parties to consider and respond to can be found at the  
following website: [www.edlb.gov.hk](http://www.edlb.gov.hk). The deadline for  
submission of views is February 5, 2007. USG agencies wishing  
to learn more about the proposed Hong Kong law, or wishing to  
comment can contact Economic Officer Craig Reilly in the U.S.  
Consulate General Hong Kong at [ReillyCT@state.gov](mailto:ReillyCT@state.gov). END  
SUMMARY.

CPRC Report Issued in June 2006  
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¶2. On November 21, Financial Secretary Henry Tang launched  
Hong Kong's three-month public consultation phase "On the Way  
Forward for Hong Kong's Competition Policy." Tang explained  
that in June 2005 the Hong Kong Government (HKG) had  
appointed a Competition Policy Review Committee (CPRC) to  
review Hong Kong's current competition policy. The CPRC  
completed its review and issued a report in June 2006. The  
report's questions and recommendations centered around three  
major subjects:

- Does Hong Kong need a new competition law, and if so, how  
such a law might be framed;
- The regulatory framework for competition law;
- Enforcement and other regulatory issues

¶3. So far Hong Kong's approach to enacting competition law has resulted in the development of sector-specific regulations that cover only the broadcasting and telecommunications sectors. These regulations allow for full investigation and, where appropriate, the sanctioning of anti-competitive conduct, but only in those two sectors. Hong Kong still has no legal framework for the implementation of cross-sector competition policy. In its report on Hong Kong's competitive environment, the CPRC acknowledged arguments in support of maintaining the current sector-specific approach to implementing competition policy, such as: Introducing a new cross-sector law could increase the cost of doing business locally, particularly for small to medium-sized enterprises (SMEs), and could affect Hong Kong's regional competitiveness; Hong Kong is already a free and competitive market and there is no need to interfere with normal business operations in a market place that already works well; and, There are other ways to enhance competition in local markets without introducing a new competition law. While noting that a new competition law ought not create significant additional burden on local businesses, nor interfere with normal business practices or economically efficient market structures, the CPRC recommended that the HKG consider introducing a cross-sector competition law in Hong Kong.

¶4. The CPRC also addressed whether the scope of any new competition law should cover only specific types of anti-competitive conduct, or should it also include the regulation of market structures and mergers and acquisitions. The CPRC recommended that the government take an incremental approach. Legislation should focus on preventing anti-competitive conduct - rather than seek to "open up" markets to competition; it also recommended against including

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mergers and acquisitions regulations in the competition law. The CPRC proposed that competition law should cover seven specific types of conduct: 1. Price Fixing 2. Bid Rigging 3. Market Allocation 4. Sales and Production Quotas 5. Joint Boycotts 6. Unfair or Discriminatory Standards 7. Abuse of Dominant Position.

#### The Regulatory Framework for Competition Law

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¶5. The CPRC listed three principal options that could be considered as a regulatory framework for the enforcement of any new competition law for Hong Kong.

- A single authority with power to investigate and adjudicate.
- Separate enforcement and adjudication functions.
- Adjudication by a specialist tribunal.

Whichever option might be adopted, the CPRC recognized that the regulatory authority would require full-time staff and sufficient resources to enforce the law effectively, as well as provide guidance and information to business and consumers alike on how the law would apply in practice.

#### Enforcement and Other Regulatory Issues

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¶6. The CPRC also examined a variety of enforcement and regulatory issues -- handling complaints, the regulator's formal powers of investigation, whether breaches of a new competition law be considered civil or criminal infringements and what levels of penalties would be suitable -- to mention a few.

#### Business Groups Weigh in on Competition Policy

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¶7. Following the introductory remarks by Financial Secretary

Tang, several leading members of the Hong Kong business community held a panel discussion on the Competition Law. Three major viewpoints emerged from this panel discussion on the question of the whether Hong Kong needs a new competition law.

- "If It's Not Broke Don't Fix It" - Represented by the Hong Kong Federation of Industry. Hong Kong is one of the most free and open economies in the world the Federation averred. While supporting open, fair competition is a laudable goal, competition legislation could be costly to local businesses and would affect Hong Kong businesses' international competitiveness. This point of view holds that passage of a cross-sector competition law will add a regulatory layer over Hong Kong's businesses and may add to the cost of doing business, particularly an increase in legal costs as companies strive to abide by the rules and fend off legal actions.

- "The Message is Essential" - Represented by the British Chamber of Commerce in Hong Kong. Anti-competitive behavior is not a major issue in Hong Kong, but Hong Kong is a small market and some sectors are dominated by major players. Competition legislation could send a clear message to international businesses that there is a level playing field in Hong Kong. However, Hong Kong should take care not to implement an overly bureaucratic system that leads to unwanted cost increases. The "small government, open market" approach has been effective in Hong Kong and permits international competitiveness. The optics of this legislation is important - it sends the message that Hong Kong is internationally competitive and protects the consumer.

- "Competition Law is needed to prevent anti-competitive behavior" - Represented by Hong Kong's small to medium enterprises (SMEs) who are concerned about monopolies and anti-competitive behavior. SMEs support legislation to ensure open, competitive markets but do have concerns about high legal costs. SMEs also can be disproportionately impacted by malicious complaints. SMEs are in favor of

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enacting a cross-sector competition law but also request the HKG to support legal defense fund and education for SMEs to stay within law.

Cunningham